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U S WEST, Inc.
Suite 700
1020 Nineteenth Street, NW
Washington, DC 20036
202 429-3135
FAX 202 296-5157

DOCKET FILE COPY ORIGINAL

USWEST

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MAR 11 1998

Federal Communications Commission
Office of Secretary

G. Michael Crumling
Executive Director-
Federal Regulatory

EX PARTE

March 11, 1998

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222, SC-1170
Washington, DC 20554

RE: CC Docket No. 97-172

Dear Ms. Salas:

Today U S WEST submitted a written presentation to Michelle Carey of the Common Carrier Bureau regarding the provision of National Directory Assistance.

In accordance with 47 C.F.R. § 1.1206(a)(1) of the Commission's rules, U S WEST encloses two copies of the written presentation for inclusion in the public record.

Acknowledgment and date of receipt of this submission are requested. A duplicate of this letter is enclosed for this purpose.

Sincerely,

B B Nugent

for Mike Crumling

Enclosures

cc: Ms. Michelle Carey
Ms. Audrey Wright
Ms. Paula Silberthau

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WILMER, CUTLER & PICKERING

2445 M STREET, N.W.
WASHINGTON, D.C. 20037-1420

TELEPHONE (202) 663-6000
FACSIMILE (202) 663-6363

JOHN H. HARWOOD II
DIRECT LINE (202) 663-6333
INTERNET JHARWOOD@WILMER.COM

100 LIGHT STREET
BALTIMORE, MD 21202
TELEPHONE (410) 966-2800
FACSIMILE (410) 966-2828

4 CARLTON GARDENS
LONDON SW1Y 5AA
TELEPHONE 011 (44) 1711 872-1000
FACSIMILE 011 (44) 1711 839-3537

RUE DE LA LOI 15 WETSTRAAT
B-1040 BRUSSELS
TELEPHONE 011 (32) 285-4900
FACSIMILE 011 (32) 285-4949

FRIEDRICHSTRASSE 95
D-10117 BERLIN
TELEPHONE 011 (49) 301 2022-6400
FACSIMILE 011 (49) 301 2022-6500

March 11, 1998

By Hand

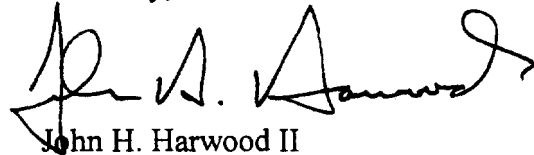
Ms. Michelle Carey
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

RE: CC Docket No. 97-172

Dear Ms. Carey:

As you requested, U S WEST submits the enclosed "Further Submission" in support of its petition for declaratory ruling in CC Docket No. 97-172. We hope that our brief delay in submitting this document has not inconvenienced you. We wanted to ensure that the submission would take account of the Commission's recent forbearance order regarding BellSouth's reverse directory assistance service.

Sincerely,



John H. Harwood II

Attachment

cc (w/att.): Audrey Wright
Paula Silberthau

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Petition of U S WEST Communications, Inc.)	CC Docket No. 97-172
for a Declaratory Ruling Regarding the)	
Provision of National Directory Assistance)	

**FURTHER SUBMISSION IN SUPPORT OF
PETITION FOR DECLARATORY RULING**

This memorandum sets forth the factual background of U S WEST's provision of its National Directory Assistance service and the legal arguments as to why the Commission should either (1) find that U S WEST is legally authorized to provide this service in its current form, or (2) forbear from applying any separate affiliate requirements to this service.^{1/} National Directory Assistance service enables a U S WEST customer to obtain the telephone numbers of other subscribers, located anywhere in the nation, by dialing a simple, familiar number and at a price far below the price charged by the interexchange carriers that have long been dominant in the market for out-of-LATA directory assistance. As it does in providing local directory assistance, U S WEST uses interLATA facilities to provide its National Directory Assistance service.

As explained below, U S WEST is authorized to provide National Directory Assistance because the service is part and parcel of U S WEST's exchange access service in the same way that the Commission has found that U S WEST may provide local directory assistance because it is part of local exchange service. This conclusion is unaffected by section 271 and

^{1/} U S WEST requests that, to the extent necessary, the Commission treat this Further Submission as a formal petition for forbearance under section 10 of the Communications Act of 1934.

section 272's regulation of "interLATA services." In particular, because a user of the National Directory Assistance service does not specify a destination point in another LATA, National Directory Assistance is not an "interLATA service" for purposes of the Act. And even if National Directory Assistance were such a service, U S WEST could still provide it as a previously authorized activity under section 271(f).

Furthermore, if National Directory Assistance were subject to the requirements of sections 271 and 272, the Commission would be required to forbear from applying those requirements pursuant to section 10 of the Act. National Directory Assistance would plainly qualify as an "incidental interLATA service" under section 271(g)(4), and U S WEST would therefore be able to provide the service subject to the separate affiliate requirements of section 272. But, for the same reasons cited by Commission in its recent decision to forbear from applying section 272 requirements to BellSouth's reverse directory service,^{2/} the Commission should forbear from applying those requirements to U S WEST's National Directory Assistance service. Enforcement of these requirements would not be necessary to ensure that U S WEST's charges and practices with regard to the service are just, reasonable, and nondiscriminatory. Nor is enforcement needed to protect consumers or to serve the public interest. Instead, allowing U S WEST to provide National Directory Assistance on an integrated basis would serve the public interest by increasing competition in the market for nonlocal directory assistance.

Finally, any decision to prohibit or require a separate affiliate for National Directory Assistance would raise serious First Amendment concerns. Because U S WEST's

^{2/} Bell Operating Companies, Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934, As Amended, to Certain Activities, CC Docket No. 96-149, Memorandum Opinion and Order, DA 98-220 (rel. Feb. 6, 1998) ("272 Forbearance Order").

provision of National Directory Assistance is indistinguishable from its provision of local directory assistance except as to the content of the information provided (nonlocal versus local numbers), any regulation of National Directory Assistance would be content-based. Such regulation is presumptively invalid. Even if directory assistance information were deemed commercial speech, a prohibition or separate affiliate requirement would not “materially and directly” advance a substantial government interest and would therefore violate the First Amendment.

FACTUAL BACKGROUND

1. Directory Assistance Has Traditionally Been Noncompetitive. Until 1997, directory assistance services were divided into two segments — local and nonlocal service. Different telecommunications carriers handled each segment. A customer wanting telephone listings from different parts of the nation therefore had to dial multiple directory assistance numbers.

To obtain a telephone listing within a customer’s local access and transport area (“LATA”), the customer had to dial one number — usually “411” or “555-1212” — and a local exchange carrier (“LEC”) such as U S WEST provided the information either with or without a separate charge. LATAs, however, are typically centered around one metropolitan area.^{3/} For telephone listings anywhere else in the nation, a customer had to use a separate, nonlocal directory assistance service.

To obtain nonlocal telephone listings, the customer first had to know the area code of the person or entity to be called. The customer then had to dial a directory assistance

^{3/}

See 47 U.S.C. § 153(25).

number in that area code: "1-area code-555-1212." For example, a Denver customer wishing to obtain a telephone listing in New York City dialed "1-212-555-1212." These calls were — and still are — automatically handled by the long distance carrier that the customer has chosen for long distance service, such as AT&T, MCI, or Sprint. AT&T currently charges 95 cents for each of these calls, while MCI and Sprint each charge \$1.10 per call. Customers typically could request up to two listings from within the area code per call. However, the long distance carrier would provide listings from only that specific area code. To obtain a listing from another area code, the customer had to make a separate directory assistance call and pay a separate directory assistance fee.

It was therefore both cumbersome and costly for a consumer to obtain multiple telephone listings from around the nation. A customer wanting two nonlocal listings from different area codes had to make at least two directory assistance calls and incurred two charges. Thus, a Denver resident seeking telephone listings from Minneapolis and Atlanta had to dial "1-612-555-1212" for the Minneapolis listing and "1-404-555-1212" for the Atlanta listing. The burdens of such a system on the consumer are obvious: The consumer must know in advance the area code of each city in which he wants a listing; must take the time to make two separate calls; and must pay separate charges to the long distance carrier for each listing.

Moreover, long distance carriers faced virtually no competition in providing nonlocal directory assistance. Consumers were, for directory assistance purposes, essentially the captives of the carriers they had chosen for their long distance service. As noted above, any call to "1-area code-555-1212" is automatically handled by the customer's presubscribed long distance carrier. The only way to obtain listings from another carrier would be to "dial around" the presubscribed carrier by first dialing a prefix of four or more digits. Having to remember the

prefix and to dial it before every directory call made the theoretical "dial around" option unattractive to consumers and not a realistic alternative.

It was at best difficult, therefore, for consumers to shop for better or cheaper directory assistance service. Whatever carrier the customer had preselected for long distance service was essentially guaranteed all of that customer's nonlocal directory assistance business, eliminating any significant incentive for long distance carriers to compete on the basis of price. Because directory assistance charges are ordinarily a small portion of any customer's total bill, those charges are unlikely to have much impact on the customer's choice of long distance company. Long distance carriers thus faced little competitive pressure with regard to nonlocal directory assistance service.

2. National Directory Assistance Introduces a Competitive Alternative. In April 1997, U S WEST began to offer its National Directory Assistance service, breaking the competitive stranglehold that long distance carriers have held over the nonlocal directory assistance market. With National Directory Assistance, a customer need dial only one, simple number to receive multiple telephone listings from anywhere in the nation. The customer can get both local and nonlocal listings with this one call, and the customer does not have to know area codes. All a customer needs to know is the names, cities, and states of the persons or organizations that he or she wishes to call.

U S WEST provides National Directory Assistance by combining a database of its own customers with a national database of telephone listings provided by Nortel. When a U S WEST customer dials "411," "1-411," or "1-home area code-555-1212" (depending on which state the customer is in) and requests a listing or listings, the call is routed to an operator based on the location of the listings. A request for a local listing (within the customer's LATA or area

code) is handled by a local directory assistance operator at one of nine local directory assistance service centers serving customers in the 14 states (and 27 LATAs) in U S WEST's region. When a customer requests a listing beyond his LATA, the call is transferred to a U S WEST operator, located at one of five "centers" in Colorado Springs, Colorado; Sioux Falls, South Dakota; Waterloo, Iowa; or Duluth, Minnesota. These National Directory Assistance operators then access either a regional database of telephone listings located in Portland, Oregon or a nationwide database of listings in Chicago. A customer's call may be routed to any of the five centers depending on system availability, and the customer never knows which center is handling the call.

In addition to providing greater convenience, National Directory Assistance saves customers money. U S WEST charges only 85 cents for two telephone listings from anywhere in the nation. This contrasts with AT&T's 95 cent charge and MCI's and Sprint's \$1.10 charge for each listing from a different area code. Thus, the Denver customer described above would save significantly by using National Directory Assistance. Instead of paying either \$1.90 or \$2.20 for the two nonlocal listings in Minneapolis and Atlanta, the customer would pay only 85 cents—a saving of over 50 percent.

3. Consumers Have Welcomed National Directory Assistance. Unsurprisingly, consumers have flocked to U S WEST's National Directory Assistance service. In the first month of operation, Colorado consumers alone made thousands of calls to obtain nonlocal numbers. Since then, the number of calls from Colorado consumers has risen substantially. In addition, U S WEST has obtained regulatory approval for National Directory Assistance in the other 13 states in which it provides local exchange and exchange access services. All told, National Directory Assistance now receives tens of thousands of calls per day, and U S WEST

expects the service to grow substantially over the next three years. These numbers translate into millions of dollars of potential savings for consumers.

4. U S WEST's Initiative Has Forced Long Distance Carriers to Be More Competitive. The long distance carriers have had to respond to U S WEST's National Directory Assistance service. No longer able to take for granted the directory assistance business of its presubscribed customers, AT&T has begun to compete in the marketplace. At the same time, however, both AT&T and MCI have launched efforts in the regulatory arena to force U S WEST to abandon the new service.

AT&T is now offering its own version of nationwide directory assistance on a trial basis. See Attachments A and B. In September 1997, AT&T initiated its "00 INFO" service, which allows its customers to dial two digits — "00" — to obtain telephone listings from anywhere in the nation. AT&T's charge for this service is the same 95-cent fee that it charges for its conventional directory assistance, but the new service allows consumers to obtain two directory listings from different area codes for the single price.

However, AT&T is marketing its nationwide directory assistance service in only two discrete parts of the country, and its geographic focus could not be more telling. Like U S WEST, BellSouth began to offer its own national directory assistance service in 1997 and announced that it plans to offer the service in the rest of its states by early 1998.^{4/} It is no coincidence that, according to AT&T's own press releases, AT&T's trial service is "for all AT&T customers in the BellSouth and US West service areas." See Attachment B. Thus, although all AT&T customers can use the "00 INFO" services, AT&T is affirmatively making

^{4/} Ameritech now also offers a National Directory Assistance service but only in two cities — Chicago and Detroit.

consumers aware of the service only where it has been forced to compete—in the areas served by U S WEST and BellSouth.

MCI has chosen to fight U S WEST's National Directory Assistance Service before the Commission rather than compete with it in the marketplace. MCI filed a complaint against U S WEST on July 21, 1997, alleging that National Directory Assistance is unlawful.^{5/} In addition, both AT&T and MCI have filed comments opposing U S WEST's Petition for a Declaratory Ruling, which sought Commission approval of National Directory Assistance.

ARGUMENT

The Commission should approve U S WEST's provision of National Directory Assistance in its current form. The Act authorizes U S WEST to provide directory assistance as part of its local exchange and exchange access services. This authorization is unaffected by section 271—and therefore not subject to the separate affiliate requirements of section 272—because National Directory Assistance is not an “interLATA service” for purposes of the Act. And even if National Directory Assistance were an “interLATA service,” U S WEST could provide it as a previously authorized activity under section 271(f). In any event, the Commission should forbear from applying the separate affiliate requirements pursuant to its authority under section 10 of the Act. National Directory Assistance would plainly qualify as an “incidental interLATA service” under section 271(g)(4), and forbearance from application of section 272 would serve the public interest and satisfy the other requirements of section 10.

^{5/} MCI also filed a complaint against Ameritech on April 10, 1997.

I. THE ACT PERMITS U S WEST TO PROVIDE NATIONAL DIRECTORY ASSISTANCE

U S WEST is authorized to provide National Directory Assistance because the service is part and parcel of U S WEST's exchange access service in the same way that the Commission has found that U S WEST may provide local directory assistance because it is part of local exchange service. This conclusion is unaffected by section 271 and section 272's regulation of "interLATA services." In particular, because a user of the National Directory Assistance service does not specify a destination point in another LATA, National Directory Assistance is not an "interLATA service" for purposes of the Act. And even if National Directory Assistance were such a service, U S WEST could still provide it as a previously authorized activity under section 271(f).

A. U S WEST Is Authorized To Provide National Directory Assistance as Part of Its Exchange Access Service Just as It Is Permitted to Provide Local Directory Assistance as Part of Its Local Exchange Service.

As a local exchange carrier, U S WEST is authorized to provide both local exchange and exchange access service. Nothing in the Telecommunications Act of 1996 requires U S WEST to receive prior approval in order to provide such service. And nothing in the statute restricts what facilities U S WEST may use in performing local exchange and exchange access functions. Indeed, U S WEST today operates its local exchange and exchange access network using numerous interLATA facilities. These facilities allow U S WEST to provide service to its customers on an efficient, centralized basis. U S WEST, for example, handles repair calls on an interLATA basis, and its local directory assistance has always been based upon an efficient, interLATA configuration.

National Directory Assistance is no different than the other functions that U S WEST performs as part of its basic service. As the Commission has long recognized, local directory assistance is integral to local exchange service because providing local numbers allows customers to use a carrier's local exchange service to call those numbers.^{6/} Local directory assistance and National Directory Assistance are indistinguishable in this regard: Just as a customer accesses local directory assistance in order to use U S WEST's local exchange service, a customer accesses National Directory Assistance in order to use U S WEST's exchange access service.

Because National Directory Assistance is so integral to U S WEST's basic service, any regulatory treatment that required U S WEST to provide National Directory Assistance under special rules—such as through a separate affiliate—would make little sense and should be avoided. A carrier plainly must be free to perform such integral functions free from regulations that do not apply to the rest of its basic service. The Act itself codifies this principle in its definition of information services by explicitly carving out adjunct-to-basic functions from the reach of the definition and thereby ensuring that those functions are not subject to the regulations applicable to information services.^{7/}

^{6/} North American Telecommunications Assoc. Petition for Declaratory Ruling Under Section 64.702 of the Commission's Rules Regarding the Integration of Centrex, Enhanced Services, and Customer Premises Equipment, Memorandum Opinion and Order, 101 F.C.C.2d 349 ¶ 26 (1985), aff'd on recon., 3 FCC Rcd 4385 (1988).

^{7/} 47 U.S.C. § 3(20). Because of this exclusion, National Directory Assistance is not an information service.

B. Section 271(a) Does Not Prohibit U S WEST from Providing National Directory Assistance.

National Directory Assistance is not an “interLATA service” and therefore does not fall within the scope of section 271(a). The Act defines “interLATA service” to mean “telecommunications between a point located in a local access and transport area and a point located outside such area.”^{8/} “Telecommunications,” in turn, is “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.”^{9/} Significantly, the Act defines interLATA services not in terms of the facilities that are used, but rather in terms of the function performed with respect to the user’s information (i.e., “transmission”). Thus, the fact that U S WEST utilizes interLATA facilities in providing directory assistance does not transform National Directory Assistance into an interLATA service.

Similarly, the fact that National Directory Assistance provides customers with out-of-LATA telephone listings does not make it an “interLATA service” under the Act. As noted above, interLATA services are defined in terms of the function performed in relation to a user’s information. Nowhere does the Act suggest that the definition of “interLATA service” depends on the type of information involved.^{10/} Although the listings provided by National Directory Assistance are presumably used to make interLATA calls, the out-of LATA nature of

^{8/} 47 U.S.C. § 3(21).

^{9/} Id. § 3(43) (emphasis added).

^{10/} Moreover, such a distinction would raise serious First Amendment issues, as set forth in Part III, below.

the listings does not affect whether the service is an "interLATA service." For purposes of section 271(a), in other words, the fact that out-of-LATA listings are provided is irrelevant.

Moreover, for National Directory Assistance to qualify as an "interLATA service" under the Act, the "user" would have to specify a particular destination point outside of the originating LATA. But a caller to National Directory Assistance is not even in a position to make such a specification. The caller does not know or care—much less specify—which of the multiple U S WEST directory centers will handle his or her call. In fact, a call to National Directory Assistance from the same caller at the same location may be directed to any one of the five national directory centers maintained by U S WEST and then to a different one of those centers on the next call. U S WEST, not the caller, makes that determination, and it does so based on variables such as the location of the caller, the availability of operators in the directory centers, and the traffic volume at the time of the call. Similarly, the caller has no reason to know—and therefore he or she cannot specify—whether the destination directory center is inside or outside the caller's LATA. Again, U S WEST makes that choice.

Nor can National Directory Assistance be brought within the ambit of interLATA services on the theory that U S WEST is the "user" of the service and specifies the destination point of a National Directory Assistance call itself. Under that view, although U S WEST would be using interLATA facilities, it would not be providing an interLATA service to its customers.^{11/} But the only activity that section 271 prohibits is providing an interLATA service.

^{11/} By contrast, in the case of 800 service, while the individual caller does not specify an out-of-LATA destination point, the "user" of the service is the business paying for the call and the service is "provided" by the carrier. Thus, 800 service is an "interLATA service" even though National Directory Assistance is not.

Accordingly, U S WEST's provision of National Directory Assistance does not constitute the provision of an interLATA service under the Act, and section 271 is inapplicable.^{12/}

**C. U S WEST May Provide National Directory Assistance as a
Previously Authorized Activity under Section 271(f).**

Even if National Directory Assistance were an interLATA service for purposes of section 271, the service would be deemed a previously authorized activity that U S WEST may provide under section 271(f). Noting that the consent decree allowed BOCs to perform the "management" of "exchange and exchange access functions,"^{13/} the MFJ court granted BOCs broad authority to perform "official services" in the most efficient manner possible, including on a centralized, interLATA basis.^{14/} The court expressly permitted the BOCs to provide "directory assistance" as an official service, and the court never limited its authorization to the provision of local listings.^{15/} Moreover, the court's rationale for allowing interLATA official services applies with full force to National Directory Assistance: Requiring carriers to use only intraLATA

^{12/} In a previous rulemaking, the Commission stated in passing that adjunct-to-basic services should generally be classified as "telecommunications services." See Implementation of the Non-Accounting Safeguards of Sections 271 and 272, CC Docket No. 96-149, First Report and Order, 11 FCC Rcd 21905, 21958 ¶ 107 (1996) ("Non-Accounting Safeguards Order"). The Commission's statement, however, had no effect on any specific service. Nor did the Commission's repetition of that statement in the 272 Forbearance Order affect the outcome of that decision. See 272 Forbearance Order ¶ 63. The Commission found the service at issue there to be an information service, not adjunct-to-basic. *Id.* The present proceeding, therefore, may be the first occasion where the treatment of adjunct-to-basic functions could affect the viability of an actual service. Far from being bound by it previous dictum, the Commission can and should consider this issue on a clean slate.

^{13/} United States v. Western Electric, 569 F. Supp. 1057, 1100-01 (D.D.C. 1983).

^{14/} See *id.* at 1097-1101.

^{15/} *Id.* at 1098 & n.179.

facilities would “result in a loss of operational and cost efficiencies,” something “clearly not contemplated by the decree.”^{16/}

Other decisions by the MFJ court also support the conclusion that National Directory Assistance is a previously authorized activity within the meaning of section 271(f). When the court, for example, assigned the 800 Directory Assistance Service assets to AT&T rather than the BOCs, the court did not rely on what would have been an obvious rationale: that BOCs should not receive the assets because they are prohibited from even providing out-of-LATA telephone listings. Instead, the court gave the assets to AT&T because otherwise AT&T’s IXC competitors could have used them equally with AT&T—something the court said would unfairly “punish” AT&T.^{17/} Thus, the MFJ court’s assignment of these assets was independent of whether the BOCs could offer 800 Directory Assistance on their own, and the court’s rationale implicitly suggests that they could.

Similarly, when the MFJ court considered whether the BOCs could provide a directory assistance service that provided some out-of-LATA telephone listings to non-BOC customers, the court stated that a waiver was necessary because the services were not communications between a BOC and its customers and thus were not “official services.”^{18/} If the consent decree had prohibited the BOCs more generally from providing out-of-LATA listings, the court would have invoked such a rationale. But it did not, and the court’s failure to do so

^{16/} Id. at 1098-99.

^{17/} Id. at 1102.

^{18/} See Memorandum at 6 n.9, United States v. Western Electric, Civil Action No. 82-0192 (D.D.C. Feb 6, 1984); Memorandum Order at 2 n.2, United States v. Western Electric, Civil Action No. 82-0192 (D.D.C. Oct. 30, 1984).

strongly implies that National Directory Assistance falls squarely within the permitted official services category. National Directory Assistance plainly involves communication between U S WEST and its customers regarding U S WEST's basic exchange access service.^{19/}

II. EVEN IF NATIONAL DIRECTORY ASSISTANCE IS AN INTERLATA SERVICE SUBJECT TO THE REQUIREMENTS OF SECTION 272, THE COMMISSION SHOULD EXERCISE ITS AUTHORITY UNDER SECTION 10 TO FORBEAR FROM APPLYING THOSE REQUIREMENTS.

As set forth in the prior section, because National Directory Service is not an interLATA service, sections 271 and 272 of the Act do not apply to it. If the Commission nevertheless concludes that National Directory Assistance is an interLATA service, then the service will be subject to the separate affiliate requirements of section 272. However, in that case, for the reasons set forth below, the Commission should exercise its forbearance authority under section 10 of the Act with respect to those requirements. Applying separate affiliate requirements to U S WEST's provision of National Directory Assistance is not necessary to ensure reasonable and nondiscriminatory rates for the service, to protect consumers, or to promote the public interest.^{20/} On the contrary, applying the section 272 requirements would force U S WEST either to raise its prices for the service substantially to compensate for its increased costs or to cease offering the service altogether. As a result, failure to forbear would burden significantly the provision of a new service that is convenient and economical for consumers and that is playing a crucial role in spurring competition in the market for nonlocal

^{19/} See 569 F. Supp. at 1097 (defining official services as "communications between personnel or equipment of an Operating company located in various areas and communications between Operating Companies and their customers").

^{20/} See 47 U.S.C. § 160(a)(1)-(3).

directory assistance. Consumers would suffer and the development of competition would be impaired.

Moreover, it is clear from a recent Commission decision involving similar circumstances that this is an appropriate case for forbearance.^{21/} The Commission there elected to forbear from applying the separate affiliate requirement of section 272 to BellSouth's reverse directory services.

A. Forbearance Is Necessary To Permit U S WEST To Provide National Directory Assistance on an Integrated Basis.

If National Directory Assistance is an interLATA service at all, it plainly qualifies as an "incidental interLATA service" under section 271(g)(4). That section provides that the term "incidental interLATA service" includes "a service that permits a customer that is located in one LATA to retrieve stored information from . . . information storage facilities of [a BOC] that are located in another LATA."^{22/} U S WEST's National Directory Assistance service allows customers to retrieve telephone listing information stored in a central database that, for all customers except those in Portland, Oregon, will always be located outside their home LATA. Thus National Directory Assistance, like reverse directory services relying on a central database, "falls squarely" within the scope of section 271(g)(4).^{23/}

Section 272(a)(2)(B) provides that incidental interLATA services, with certain specified exceptions not applicable here, are subject to the separate affiliate requirements. In the absence of forbearance, therefore, U S WEST would be prohibited from offering National

^{21/} See 272 Forbearance Order ¶¶ 52-98.

^{22/} 47 U.S.C. § 271(g)(4).

^{23/} See 272 Forbearance Order ¶ 68.

Directory Assistance on an integrated basis. As discussed below, such a result would harm competition and be contrary to the public interest.

B. The Commission Has Authority To Forbear from Applying the Requirements of Section 272 to U S WEST's National Directory Assistance Service.

Section 10 of the Act provides that the Commission “shall forbear from applying . . . any provision of this Act” if three conditions are met. First, enforcement of the provision must be “not necessary to ensure that the charges, practices, classifications or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable, and are not unjustly or unreasonably discriminatory.” Second, enforcement must be “not necessary for the protection of consumers.” Third, forbearing from applying the provision must be “consistent with the public interest.”^{24/}

Although Section 10(d) limits the Commission’s forbearance authority, the Commission recently concluded in the 272 Forbearance Order that this limitation applies to the requirements of section 272 only with respect to services for which a BOC must obtain prior authorization under section 271(d)(3).^{25/} Because “incidental interLATA services” that fall within the scope of section 271(g) do not require such authorization, the Commission found that it has the authority to forbear from applying section 272 to such services.^{26/} As discussed above, National Directory Assistance qualifies as an “incidental interLATA service” under section 271(g)(4). Therefore, the Commission may, consistent with section 10(d), forbear from applying

^{24/} 47 U.S.C. § 160(a).

^{25/} 272 Forbearance Order ¶¶ 22-23.

^{26/} *Id.* ¶¶ 23, 65.

the requirements of section 272. Indeed, if the Commission determines that the three-prong test set forth in section 10(a) is satisfied, the statute requires the Commission to so forbear.

C. Forbearance in this Case Would Satisfy the Criteria Set Forth in Section 10(a) of the Act.

Section 10(a) requires the Commission to forbear from the application of section 272 to U S WEST's National Directory Assistance service if it concludes that such forbearance would satisfy the criteria established in subsections 10(a)(1), 10(a)(2), and 10(a)(3). The circumstances in this case easily satisfy all three criteria.

1. Forbearance in this Case Satisfies Section 10(a)(1).

Under section 10(a)(1), the Commission must consider whether the application of section 272 is necessary to ensure that U S WEST's "charges, practices, classifications, or regulations . . . are just and reasonable," and that they "are not unjustly or unreasonably discriminatory."^{27/}

a. Application of Section 272 Is Not Necessary To Ensure Just, Reasonable, and Nondiscriminatory Charges.

Applying section 272 to U S WEST's National Directory Assistance service is not necessary to ensure that U S WEST's rates for that service are just, reasonable, and nondiscriminatory. U S WEST faces powerful competition in the nonlocal directory assistance market, principally from long distance carriers such as AT&T, MCI, and Sprint. Indeed, these carriers have until recently had unchallenged control of the directory assistance business of their presubscribed long distance customers. U S WEST competes in the market as a new entrant seeking to underprice these established providers. Market forces therefore supply ample

^{27/}

47 U.S.C. § 160(a)(1).

assurance that U S WEST will not charge unreasonable rates. Furthermore, applying section 272 to U S WEST's National Directory Assistance service would make the provision of that service significantly more costly, forcing U S WEST to raise prices to consumers. Thus, far from ensuring reasonable rates, application of section 272 would do the opposite: It would drive U S WEST's rates to artificially high levels and ease the pressure on its competitors to engage in competitive price reductions.

U S WEST has offered National Directory Assistance for nearly a year at prices substantially below those of its more established competitors. AT&T, MCI, and Sprint generally charge their long distance subscribers 95 cents, \$1.10, and \$1.10, respectively, for each listing from a different area code; U S WEST charges 85 cents for two listings from anywhere in the nation. The 85 cent charge applies to all customers in U S WEST's service region. Thus, there is no plausible argument that U S WEST's current rates are unreasonable, unjust, or discriminatory. Moreover, U S WEST has filed tariffs for the service in all the states in its region, thus subjecting the terms and prices to public scrutiny and the possibility of state regulatory intervention if they appear unreasonable or discriminatory. No state has withheld approval of U S WEST's National Directory Assistance tariffs.

Nor is there any prospect of U S WEST being able to charge unreasonable rates in the future. Competition with interexchange carriers is likely to intensify, as indicated by AT&T's recent launch of its own version of a nationwide directory assistance service on a trial basis throughout U S WEST's region. AT&T's service follows U S WEST in offering customers two listings anywhere in the country for one price—in effect, a fifty percent price reduction for customers seeking multiple numbers with different area codes. Moreover, National Directory Assistance is subject to competition from other sources as well. Internet service providers offer

directory information accessible from anywhere with no per usage charge; U S WEST's own directory publishing affiliate offers electronic white and yellow pages over the Internet; and providers of information services, payphone service, and cellular service all can assist their customers in obtaining directory information. The 1996 Act helps to safeguard the viability of these and other alternative directory information sources by requiring all local exchange carriers to make subscriber list information available on a nondiscriminatory basis to "any person upon request for the purpose of publishing directories in any format."^{28/}

Applying section 272 to U S WEST's National Directory Assistance not only is unnecessary but also would have the highly counterproductive effect of substantially increasing U S WEST's rates for the service. Application of section 272 would leave U S WEST with two options for continuing to offer nonlocal directory assistance: It could restructure its system for delivering the service to avoid the use of interLATA transmissions, or it could offer the service through a separate affiliate. Either approach would increase U S WEST's costs and force it to raise the prices charged to consumers.

Providing nonlocal directory assistance without transmitting data between LATAs would require the construction of an independent system of directory assistance facilities in each individual LATA, for the use of customers in that LATA only. Each LATA would need to have its own national database, its own equipment for retrieving information from the database, its own set of operators, and its own buildings or offices to house the operators. Providing service in this fashion would involve enormous duplication and the loss of critical economies of scale that U S WEST now achieves from the centralization of U S WEST's current National Directory

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47 U.S.C. § 222(e).

Assistance system. The costs therefore would be far higher, and the price U S WEST charged to customers—if indeed it was able to continue providing such service at all—would rise accordingly.

Providing nonlocal directory assistance through a separate affiliate would be similarly inefficient, eliminating economies realized by the sharing of personnel, equipment, and facilities between the local and nonlocal branches of U S WEST's directory assistance service.^{29/} This in turn would force U S WEST either to increase the price charged to consumers or to cease offering the service.

Operating through a separate affiliate means sacrificing opportunities to share costs efficiently among different services. In the case of local and nonlocal directory assistance, the similarity in the functions provided creates particularly important opportunities for cost sharing. In addition to general management and overhead costs, the two services can logically and efficiently share the costs of some of their major components. One such component is the "voice response platform," the system that asks callers to identify the location and name of the listing they seek, records that information, and routes the call to the appropriate facility for retrieving it. Offering local and nonlocal directory assistance on an integrated basis allows for the efficient sharing of this system: U S WEST installs and operates a single response platform

^{29/} In fact, it is not even clear that the affiliate's service could make use of the existing assets (for example, operator work stations) currently used to provide National Directory Assistance. The Commission has stated that when a BOC transfers ownership of network elements to an affiliate, the affiliate will be treated as an "assign" of the BOC—and hence will be subject to the same restrictions on provision of interLATA services that apply to the BOC itself. See Non-Accounting Safeguards Order, 11 FCC Rcd at 22054 ¶ 309. Therefore, to remain eligible to provide nonlocal directory assistance using interLATA transmissions, the affiliate arguably would have to build its system from scratch rather than relying on assets transferred from U S WEST.

that handles the initial intake of all directory assistance inquiries, recording the customers' requests and routing them to local directory assistance or National Directory Assistance operators as appropriate.

Providing National Directory Assistance through a separate affiliate would force U S WEST to abandon this integrated approach and to create instead two separate, independent response platforms. Indeed, U S WEST could satisfy the section 272(c) requirement to provide unaffiliated entities with nondiscriminatory access only with an independent response platform: If the two platforms remain integrated and interdependent, U S WEST will not be in a position to offer its platform to third parties on the same basis as it does to its affiliate. But creating and operating an independent response platform would be technically infeasible, and using separate personnel, equipment, and offices would further add substantially to the cost of National Directory Assistance.

Operating on a nonintegrated basis also would end the efficient sharing of operator-provided manual screening functions. The voice response platform is unable to route approximately thirty percent of all requests, typically because the caller does not speak clearly enough. Such requests currently go to U S WEST's local directory assistance operators, who manually screen them and route them to a National Directory Assistance center if necessary. Maintaining a separate manual screening system with its own operators and equipment again would add to the ultimate cost of the service.

b. Application of Section 272 Is Not Necessary To Ensure Just, Reasonable, and Nondiscriminatory Practices, Classifications, and Regulations.

The application of section 272 also is not necessary to ensure reasonable and nondiscriminatory practices with respect to other carriers. As U S WEST has previously said, U S WEST will comply fully with the requirements of section 251 by providing National Directory Assistance at a wholesale discount to any carrier wishing to resell the service.^{30/} U S WEST also will make the “411” or “1-411” access code available to any CLEC purchasing switching from U S WEST or reselling U S WEST’s local exchange service.^{31/} Thus, CLECs will be able to offer their customers the same nationwide directory assistance capability that U S WEST customers have—and, like U S WEST, will be able to make this service available by dialing the same number that any other customer in the same state uses.

Imposing additional section 272 requirements on U S WEST’s National Directory Assistance is neither necessary nor desirable. U S WEST has no market power or bottleneck position with respect to the components of nonlocal directory assistance. To the contrary, U S WEST will stand in all respects on identical footing with CLECs that wish to provide nonlocal directory assistance. First, U S WEST has no special control over or access to the national database of telephone listings that it has purchased from Nortel. Any CLEC wanting to provide nonlocal directory assistance could do likewise. Second, U S WEST will provide access to its own in-region directory assistance database to any requesting party on reasonable and

^{30/} See Petition of U S WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance, CC Docket No. 97-172, Reply Comments of U S WEST Communications, Inc. (Sept. 17, 1997) at 13.

^{31/} Id. at 12-13.